IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

WPMB No. 1903 of 2001, decided on 23.7.03

(Old No. 18290/99)

Virendra Kumar Pal & Ors.

Vs.

State & Ors.

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Initials of Judge

Date 23.7.03

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1903 (M/B) of 2001

CIVIL SIDE

Sri Virendra Kumar Pal & 84 others …… PETITIONERS

Versus

State of Uttaranchal and others …… RESPONDENTS

Hon'ble P.C. Verma, A.C.J.
Hon'ble Rajesh Tandon J.

Heard Sri Ram Ji Srivastava, Advocate appearing for the petitioners and Sri N.B. Tiwari, Chief Standing Counsel on behalf of the State.

The present writ petition has been filed praying for quashing of the acquisition proceedings dated 8.2.1962. One of the prayer seeking certiorari reads as under:

(a) issue a writ or order or direction in the nature of certiorari quashing the acquisition proceedings by declaring the notification for acquisition dated 8.2.1962 as null and void;

Briefly stated on 15.9.1961 notification under sub section (1) of section 4 of Land Acquisition Act was published in respect of plots of 8 maujas of Jwalapur Tehsil of District Saharanpur proposing to acquire the land for public purpose. On 8.2.1962 in continuation of notification under sub section (1) of section 4 of the Act, notification under section 6 read with section 17 (1) of the Act was made declaring that the land is needed for a public purpose namely for construction of dwelling houses for workers and for other works for setting up the factory for manufacturing heavy electric equipments or

Heavy Electrical India Ltd. It was further provided that the Collector of District Saharanpur will take over the acquisition of the said land. The acquisition proceedings thus became final. After finality of acquisition proceedings notification under section 11 of the Land Acquisition Act, was made on 22nd January 1964. A perusal of possession certificate shows that possession was handed over to Heavy Electrical India Ltd on 8.2.1962.

Respondent nos.3 and 4 have filed their counter affidavit and vehemently urged that acquired land was handed over to the Heavy Electrical India Ltd; which was subsequently became Bharat Heavy Electrical Ltd. know as (BHEL) Paragraph 10 of the counter affidavit shows that a society known as Kalpatru through Sri Avinash Dubey has preferred a writ petition before Hon'ble Supreme Court. The said writ petition no.606 of 1998 was withdrawn by the Society on 7.12.98. Order passed by the Apex Court is quoted blow:

"The writ petition is dismissed as withdrawn"

Further the said society preferred a writ petition before Allahabad High Court registered as 3373 of 1999 and the Bench consisting of Hon'ble Palok Basu J. and Hon'ble R.R.K. Trivedi J. dismissed the writ petition on 1.2.1999 in respect of the same land which was acquired for the public purpose for establishing the factory of BHEL. Their Lordships have observed as under:

"It is admitted to the petitioner that huge area was acquired for the public purpose for establishing a factory of Bharat Heavy Electrical Limited. It has been made apparent through the writ petition that mot of that area has been covered by the factory but there was some area perhaps left unoccupied by the factory. It has been stated in paragraph no.15 to 20 of the writ petition that the said area has been used for hospitals, parks, cinema hall, etc. It is not understandable how and why the area which was left out from the

needs of the factory be not useable for such public purpose as mentioned above."

The petitioners have not come with clean hands as there is no reference of the earlier writ petition filed either before the Hon'ble Supreme Court or before the Allahabad High Court and straight away prayer has been made for a writ in the nature of certiorari quashing the acquisition proceedings by declaring the notification for acquisition as null and void.

After hearing the learned counsel for both the parties at length We are of the opinion that no writ petition is maintainable under Article 226 of Constitution of India as the land having been acquired for the public purpose. The acquisition proceedings having achieved finality, the land has already vested with the Government.

It has been held by the Apex Court in the case *Lt. Governor of Himachal Pradesh and another, AIR 1970 SC 1576,* as under:

"When possession of the land is taken under Section 17 (1), the land vests in the Government."

It has been further held in the case *Rajasthan Housing board and others vs. Shri Kishan and others,(1993) 2, Supreme Court cases 84,* as under:

"Once the possession of the land is taken it is not open to the Government to withdraw from the acquisition."

Similar view was taken by the Apex Court in *Tej Kaur and others vs. State of Punjab and others 2003 (4) AIC 7 (S.C.)* as under:

"As regards Civil Appeal No.67 of 1998, the appellants did not raise any objection within a reasonable time after section 6 Declaration was made. The possession of the land itself was given to the third parties for the purpose of starting the industry. Moreover, the land of the appellants is surrounded completely by other plots which are acquired and sought to be used for industrial purposes. We

do not find any justifiable ground to exclude the appellants' lands from acquisition."

Moreover, expression "public purpose" has undergone a change and has been substituted by Act No.68 of 1984 with effect from 24.9.1984. It reads as under:/

(f)the expression "public purpose" includes-

(i) .....

(ii) ……..……..……..…..

(iii) *the provisions of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;*

(iv) ……..……..…

(v) *the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;*

(vi) *the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State or co-operative society within the meaning of any*

law relating to co-operative societies for the time being in force in any State;

The acquired land, therefore, is fully covered under the definition of "public purpose" as defined under section 3 (f) of Land Acquisition Act for the township of Bharat Heavy Electricals Ltd.

We have perused the writ petition, counter affidavits and rejoinder affidavit. We are of the opinion that writ petition is wholly misconceived as after a lapse of 41 years it is not open for the petitioners to challenge the notification of the year 1961-62; further the acquisition having attained finality it is not open to the petitioner to challenge the same under Article 226 of Constitution of India. Moreover the validity of acquisition proceedings having already been adjudicated by the Apex Court on 7.12.98 and by Allahabad High Court on 1.2.1999 and now it is not open for the petitioners to challenge the same by subsequent writ petition under Article 226 of the Constitution of India.

Therefore, We find no merits in the writ petition and the writ petition is accordingly dismissed.

23.07.2003 (P.C. Verma, A.C.J.) (Rajesh Tandon, J.)
Dhyani